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**COMMISSIONERS**

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IN THE MATTER OF THE  
APPLICATION OF ARIZONA PUBLIC  
SERVICE COMPANY FOR A  
HEARING TO DETERMINE THE FAIR  
VALUE OF THE UTILITY PROPERTY  
OF THE COMPANY FOR  
RATEMAKING PURPOSES, TO FIX A  
JUST AND REASONABLE RATE OF  
RETURN THEREON, TO APPROVE  
RATE SCHEDULES DESIGNED TO  
DEVELOP SUCH RETURN

DOCKET NO. E-01345A-08-0172

Arizona Corporation Commission  
**DOCKETED**

OCT 23 2009

DOCKETED BY	<i>[Signature]</i>
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REPLY BRIEF  
OF  
ARIZONA PUBLIC SERVICE COMPANY

October 23, 2009

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## I. INTRODUCTION

Only one party opposes unqualified approval of the Settlement Agreement ("Agreement") submitted to the Arizona Corporation Commission ("Commission") on June 12, 2009. Thus, the great bulk of Arizona Public Service Company's ("APS" or "Company") Reply Brief will be devoted to responding to issues raised by Intervenor Barbara Wyllie-Pecora. In doing so, APS will try not to repeat arguments that have already been presented by itself and other of the parties to the Settlement ("Settling Parties") in their initial briefs.

The Chief Administrative Law Judge also requested the Settling Parties to respond to each other's initial briefs if there were disputes as to interpretation of the Agreement. APS has found no disputes but will use this Reply Brief to clarify a point concerning one of the "schools" programs called for in the Agreement and also to respond to Staff Late-Filed Exhibit 19 ("S-19").

## II. REPLY TO BARBARA WYLLIE-PECORA INITIAL BRIEF

### A. *Recording Schedule 3 Proceeds as Revenue*

A discussion about whether or not APS Service Schedule 3 ("Schedule 3") proceeds should be accounted for as revenue or as contributions in aid of construction ("CIAC") is an odd beginning for Ms. Wyllie-Pecora's initial brief. Simply put, new service applicants should be indifferent of the accounting treatment by the Company for Schedule 3 proceeds. They pay the same amount either way, as was discussed in APS's Initial Brief at 28. And if this issue causes the Agreement to be rejected, it is difficult to see how such an unfortunate result could advance Ms. Wyllie-Pecora's agenda. The current version of Schedule 3, to which Ms. Wyllie-Pecora so strongly objects, would continue unchanged.

Irrespective, it is simply wrong to portray revenue treatment of Schedule 3 as somehow harmful to APS customers. First, there was uncontradicted testimony from several witnesses, including APS Chief Financial Officer James Hatfield, emphasizing that the Agreement depended on this treatment of Schedule 3 or a revenue neutral adjustment to the

1 base rate increase. *See* Hearing Testimony of James Hatfield (“Hatfield Testimony”), Tr. at  
2 2493; Hearing Testimony of Ralph Smith (“Smith Testimony”), Tr. at 423, 424 and 1793;  
3 Hearing Testimony of Jodi Jerich (“Jerich Testimony”), Tr. at 906; and Agreement at §10.3.  
4 The many benefits of this Agreement can hardly be characterized as a bad thing for  
5 customers – present or future – and the Agreement’s proposed accounting treatment for  
6 Schedule 3 proceeds is critical to ensuring those benefits. Second, APS Exhibits 17 and 27  
7 both indicate benefits to APS customers from such revenue treatment for years to come  
8 (and certainly for the three years of revenue treatment provided for in Section 10.1 of the  
9 Agreement) with a present value benefit to customers under any remotely likely scenario.  
10 *See* Hearing Testimony of Jeffery Guldner (“Guldner Testimony”), Tr. at 617, 701-702,  
11 765-768, 770-771, and 819; *see also* Letters to Chairman Mayes in this docket dated June  
12 25, 2009 and August 13, 2009.

13 Ms. Wyllie-Pecora refers to revenue treatment as a “questionable accounting  
14 practice.” Ms. Wyllie-Pecora Brief at 1-2. Such a characterization is flat out wrong. In fact,  
15 as noted in APS’s Initial Brief at 35, revenue treatment is no more “questionable” than is  
16 accounting for Schedule 3 proceeds as CIAC. Both accounting treatments are the product of  
17 a regulatory determination with either being unquestioned as long as sanctioned by the  
18 Company’s regulator. *See* APS Initial Brief at 35.

19 To her credit, Ms. Wyllie-Pecora does not allege that the revenue treatment of  
20 Schedule 3 proceeds results in any double-payment by APS customers. Every witness that  
21 addressed that issue refuted that any such double payment would exist. *See* APS Initial  
22 Brief at 34. However, Staff did contend in its initial brief that from the perspective of the  
23 service applicant, one could argue that such applicant would be paying twice. *See* Staff  
24 Brief at 29. This somewhat misstates the situation. The applicant is paying no more for  
25 connecting to the APS system than under the CIAC treatment of Schedule 3 but benefits  
26 from the lower rates resulting from revenue treatment, thus actually paying *less* than would  
27 be the case under CIAC accounting. In short, applicants are no longer funding a portion of  
28

1 the Company's infrastructure but rather paying a portion of the overall revenue requirement.  
2 See APS Initial Brief at 34.

3 Ms. Wyllie-Pecora characterized the rate relief afforded APS customers in this case  
4 on account of revenue treatment of Schedule 3 as "borrowing from the future" in that it  
5 could increase revenue requirements in the Company's next general rate case. See Ms.  
6 Wyllie-Pecora Brief at 1. As discussed above, APS disagrees with that characterization.  
7 There is no need for revenue treatment of Schedule 3 proceeds in this proceeding to  
8 increase base rate revenue requirements in the Company's next case or for many years to  
9 come, if ever. Future rate impacts would depend on what the Commission did with regard to  
10 Schedule 3 in that and future APS rate cases, the level of customer growth, and the degree  
11 to which Schedule 3 proceeds grow over time. However, even if it turns out that a possible  
12 consequence of a change to the current Schedule 3 accounting policy that affords lower  
13 rates *today*, during the midst of a recession, is a marginally higher revenue requirement for  
14 an APS rate case to be decided over two and a half years from now, APS believes the  
15 current economic circumstances easily support such a tradeoff.

16 Under terms of the Agreement, current APS customers will be asked to fund  
17 investments in energy efficiency and renewable energy that have benefits extending to  
18 Arizonans for years into the future, whether or not they are APS customers. This could be  
19 characterized in the same sense as used by Ms. Wyllie-Pecora as future customers  
20 "borrowing from the present," but such characterization would be equally inappropriate.  
21 The bottom line is this: In every rate order, the Commission makes decisions that impact  
22 both current and future customers in different ways because the Commission believes they  
23 are the right decisions under the circumstances presented. Revenue treatment of Schedule 3  
24 proceeds is no different. It is the right decision under the circumstances, as witness after  
25 witness agreed. See Hatfield Testimony, Tr. at 2402; Smith Testimony, Tr. at 423; Jerich  
26 Testimony, Tr. at 906; and Hearing Testimony of Kevin Higgins ("Higgins Testimony"), Tr.  
27 at 296-297.

1 **B. Return to Subsidies**

2 Ms. Wyllie-Pecora's second argument represents the final metamorphosis of a  
3 position that began in her intervention as a relatively modest request for reinstatement of the  
4 "free footage" allowance for individual single-family residential line extensions to what is  
5 now a full-fledged plea for a return to Version 8 of Schedule 3, which is the line extension  
6 policy that was in place prior to July 1, 2007.<sup>1</sup> APS will not repeat the eloquent arguments  
7 made by so many of the Settling Parties in their initial briefs as to the basis for the current  
8 Commission policy on line extensions, which recognizes as does Ms. Wyllie-Pecora, that  
9 there was never anything "free" about line extensions. *See* Hearing Testimony of Barbara  
10 Wyllie-Pecora ("Wyllie-Pecora Testimony"), Tr. at 476. Neither does APS deny that  
11 removing what was admittedly a long-standing subsidy to developers and other land owners  
12 created and will continue to create individual hardships to some who purchased property  
13 with the intent to build personal residences. *See* Hearing Testimony of Peter Ewen ("Ewen  
14 Testimony"), Tr. at 675-676 and 693. Rather, APS will address Ms. Wyllie-Pecora's  
15 unsubstantiated claims of widespread devastation of the Arizona real estate market and  
16 shrinking tax bases for state and local government supposedly attributable to the current  
17 version of APS Schedule 3. APS will also correct Ms. Wyllie-Pecora's repeated  
18 understatement of the cost to APS customers of returning to subsidized line extensions.

19 The simple facts are as follows. Ms. Wyllie-Pecora presented no evidence that the  
20 current APS line extension policy was having a significant impact on overall property  
21 values or property tax receipts. There was not a single instance where property had been  
22 appraised by a licensed appraiser both before and after the change in Schedule 3. The  
23 handful of anecdotal examples shown in Wyllie-Pecora Exhibit 2 establishes no basis for  
24 concluding that proximity to electric service explained differing sales prices. *See* Hearing  
25 Testimony of Richard Merritt ("Merritt Testimony"), Tr. at 391. There was not a single  
26 comparison drawn between property values in the APS service area and those in the service

27 \_\_\_\_\_  
28 <sup>1</sup> Indeed, even within her initial brief, it is sometimes unclear what precisely Ms. Wyllie-Pecora is asking the Commission to do with regard to Schedule 3. *See* Ms. Wyllie-Pecora Brief at 4.

1 areas of utilities, such as SRP and some of the cooperatives/electrical districts, still  
2 permitting free footage allowances. *See* Merritt Testimony, Tr. at 396; Jerich Testimony, Tr.  
3 at 901. Rather, what evidence as was presented on this last point would indicate that there is  
4 no relative impact on real estate activity attributable to differences in extension policies. *See*  
5 Ewen Testimony, Tr. at 642-643; Hearing Testimony of Bobby Miller ("Miller  
6 Testimony"), Tr. at 1873-1875; *and also* APS Exhibit 20. Finally, even if one were to  
7 assume that proximity to existing electric facilities materially impacts land values, there is  
8 no reason to believe that the diminished value of those parcels more distant from such  
9 facilities will not be offset by the increased value of other parcels more proximate to the  
10 Company's existing system. *See* Merritt Testimony, Tr. at 412.

11 The witnesses presented by Ms. Wyllie-Pecora uniformly agreed that the current  
12 problems in the real estate market were, even in their view, largely independent of what  
13 version of Schedule 3 was or was not in place. *See* Merritt Testimony, Tr. at 398-399;  
14 Miller Testimony, Tr. at 1867-1868 and 1872; Hearing Testimony of Carl Faulkner  
15 ("Faulkner Testimony"), Tr. at 563; and Hearing Testimony of Ian Campbell ("Campbell  
16 Testimony"), Tr. at 369. Nonetheless, they all seemed willing to blame their woes on this  
17 Commission's change in policy with regard to "free" line extensions. One witness in  
18 particular seemed adamant on this issue.

19 Mr. Carl Faulkner, a developer in Douglas, Arizona, attributed his inability to  
20 continue with a new development in Douglas to the 2008 changes in Schedule 3. Unlike  
21 some of the figures cited in public comments for particularly remote locations, Mr.  
22 Faulkner's development, which would never have been eligible for a footage allowance,  
23 even under Version 8 of Schedule 3, was quoted a fairly modest \$2300 per lot for APS  
24 service. *See* Faulkner Testimony, Tr. at 565. Mr. Faulkner readily admitted that the City of  
25 Douglas itself was not in the "free" utility extension business and had assessed him some  
26 \$700,000 or \$16,300 per lot for sewer service and another \$8500 per lot for impact fees. *See*  
27 Faulkner Testimony, Tr. at 581 and 583 APS witness Peter Ewen testified that Douglas was  
28 suffering from one of the worst cases of surplus housing in the APS service territory due to

1 the present recession. *See* Ewen Testimony, Tr. at 888. And yet we are to believe that  
2 somehow Schedule 3 was the proverbial straw that broke the back of this new subdivision.

3 APS is not without sympathy for the many in construction and other related  
4 industries that have suffered so badly in the past two years. That is why APS was willing to  
5 agree to withdraw some of its earlier proposals for facilities charges and impact fees. But  
6 the solution to an overbuilt real estate market is not to subsidize more building, especially in  
7 areas further away from existing electric infrastructure – a point conceded by Ms. Wyllie-  
8 Pecora's own expert. *See* Rebuttal Settlement Testimony of Peter Ewen (APS Exhibit 16),  
9 Attachment PME-1-S at 50.

10 Ms. Wyllie-Pecora at several places in her brief identifies a quantification of the  
11 impact of her position on the economics of the Agreement. Whether that be the \$.20 per  
12 month figure<sup>2</sup> (Wyllie-Pecora Brief at 3 and 4) or the \$6 million - \$10 million per year  
13 number (Wyllie-Pecora Brief at 4), it must be kept in mind that these represent solely the  
14 impact of going back to a 1000 foot allowance for individual single-family residential  
15 extensions, and not the \$23 million to \$49 million per year that would be lost if Version 8 of  
16 Schedule 3 were reinstated in its entirety. *See* Agreement at §10.2.

17 Ms. Wyllie-Pecora suggests that this return to subsidies could be financed without a  
18 higher base rate increase by either taking some of the over-collected Power Supply  
19 Adjustment ("PSA") balance and applying it to fund line extensions or by somehow using  
20 some of the \$30 million per year savings mandated by the Agreement. *See* Wyllie-Pecora  
21 Brief at 4. Whether the money comes from base rates or the PSA, this is still a subsidy from  
22 current customers to landowners. And APS has factored in both the anticipated revenue  
23 from Schedule 3 and the mandated expense savings when negotiating the Agreement with  
24 the Settling Parties. Reducing these savings, as is perhaps suggested by Ms. Wyllie-Pecora,  
25 would not finance line extensions but would in conjunction with a return to subsidies  
26 exacerbate APS's financial problems.

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27  
28 <sup>2</sup> The impact was estimated to be \$0.20 per month for the typical residential customer, for every \$5 million annually. *See* Direct Settlement Testimony of David Rumolo at 12.

1 **C. Gold Plating**

2 By "gold plating," Ms. Wyllie-Pecora apparently means the installation of equipment  
3 that upgrades the system rather than merely connecting a new customer to the system or  
4 charging inflated prices. This is yet another unsupported allegation by Ms. Wyllie-Pecora.  
5 She cites anecdotal examples from the public comment sessions of individual applicants  
6 that have had original estimates reduced because the scope of work changed for one reason  
7 or the other. APS witness Daniel Froetscher clarified each of these circumstances both  
8 during the hearing (Froetscher Testimony, Tr. at 697-717) and in his post-hearing letter to  
9 Chairman Mayes dated October 6, 2009. Curiously, neither Ms. Wyllie-Pecora nor her  
10 many witnesses expressed any concern with "gold plating" prior to the change in APS line  
11 extension policy after June of 2007. *See* Faulkner Testimony, Tr. at 580.

12 Commission Staff discussed and dismissed the real world potential for such "gold  
13 plating" in their initial post-hearing briefs. *See* Staff Brief at 28. If anything, these  
14 commentators understated the significance of the Settlement's introduction of a set schedule  
15 of charges, overseen and regulated by this Commission that will be applicable to virtually  
16 all service extensions until the Company's next general rate case. This completely  
17 eliminates the possibility of overcharging for any of the individual components of a  
18 particular line extension.

19 Mr. Froetscher described the Company's long-standing practice with regard to line  
20 extensions: "When customers are seeking new service, we price the facilities needed to  
21 serve them as the minimum cost to serve. In other words, the bare minimum set of facilities  
22 that are need in order to provide them service of sufficient voltage and capacity." Froetscher  
23 Testimony, Tr. at 668. He also stated: "the minimum cost to serve . . . is a well understood  
24 concept and that system planning costs or system improvements costs are not passed on to  
25 customers." Froetscher Testimony, Tr. at 704-705. APS witness Guldner went on to explain  
26 that those responsible for line extensions were totally divorced from the issues of CIAC  
27 versus revenue and would not change their approach to extending service because of a  
28 particular accounting treatment. *See* Guldner Testimony, Tr. at 785.

1 Although not referenced in her brief, Ms. Wyllie-Pecora's testimony cited anecdotal  
2 examples of other utilities' line extension charges as evidence that APS's costs are  
3 overstated. *See* Wyllie-Pecora Exhibit 4 at 3. At hearing, Ms. Wyllie-Pecora agreed that  
4 these charges represented what these other utilities had been authorized to charge by their  
5 respective regulators and did not necessarily represent the actual costs of an extension. *See*  
6 Wyllie-Pecora Testimony, Tr. at 447 and 473-474. Moreover, APS would remind the  
7 Commission that the Company's proposed schedule of charges for Schedule 3 has been  
8 thoroughly reviewed and approved as cost-based by Commission Staff. *See* S-19. This  
9 should remove all concerns that APS will be able to somehow overcharge applicants for  
10 electric service.

11 ***D. Due Process***

12 Ms. Wyllie-Pecora, although conceding that she had been accorded all due process in  
13 the present proceeding (Ms. Wyllie-Pecora Brief at 14), contends the original adoption of  
14 changes to Schedule 3 did not provide due process to affected persons. *Id.* She specifically  
15 states that "the ACC did not provide advance notice it was considering changing the 1000  
16 foot extension policy." Ms. Wyllie-Pecora Brief at 15. Ms. Wyllie-Pecora provides no legal  
17 authority describing what notice would have been required to satisfy what she terms as "due  
18 process." Moreover, her statement is not factually accurate. At the direction of the  
19 Commission, the Company provided extensive notice of its last general rate application. *See*  
20 Decision No. 69663 (June 28, 2007) at 139. That application specifically included a request  
21 to eliminate the 1000 foot "free footage" provision. *See* Hearing Testimony of David  
22 Rumolo ("Rumolo Testimony"), Tr. at 521. That the Commission decided that it wished to  
23 go even further than proposed by APS in eliminating line extension subsidies does not  
24 change the fact that Schedule 3 was clearly placed at issue in the Company's last, and  
25 indeed, last two rate cases, each of which were noticed to customers pursuant to  
26 Commission directive. *Id.*

1 ***E. Discrimination***

2 Ms. Wyllie-Pecora premises a claim of discrimination against landowners elsewhere  
3 in the Company's service area on the fact that the Commission has "grandfathered" line  
4 extensions on Native American reservations within the APS service area under Version 8 of  
5 Schedule 3. *See* Ms. Wyllie-Pecora Brief at 15-17. As with her due process argument, Ms.  
6 Wyllie-Pecora provides no authority holding that exempting reservation lands from  
7 provisions of state law otherwise applicable off-reservation is violative of either the 14<sup>th</sup>  
8 Amendment to the United States Constitution or Article 2 §13 of the Arizona Constitution.  
9 This is hardly surprising given that similar exemptions abound under state and federal law  
10 as a result of principles of tribal sovereignty. *See Valley National Bank of Phoenix v.*  
11 *Glover*, 62 Ariz. 538, 159 P.2d 292 (1945) (neither Article 2 §13 nor the 14<sup>th</sup> Amendment  
12 prohibit the classification of objects or persons so long as all members within the class are  
13 treated the same and the classification is not arbitrary); *Farmer v. Killingsworth*, 102 Ariz.  
14 44, 488 P.2d 172 (1967) (same holding); and *Sears v. Hull*, 192 Ariz. 65, 961 P.2d 1013  
15 (1998) (suit challenging restriction of gaming rights in Arizona to eligible Indian tribes  
16 rejected).

17 Second, Ms. Wyllie-Pecora's argument fails to recognize the unique regulatory  
18 status of Native American reservations under state and federal law. In Decision No. 54663  
19 (August 22, 1985), the Commission found that its ability to regulate utility service on at  
20 least the Navajo Reservation was at the sufferance of the Navajo Nation. The Commission  
21 therefore acted reasonably by deferring to the stated wishes of tribal leaders that Version 8  
22 of Schedule 3 continue to remain in force on tribal reservations within the APS service area.

23 In any event, the exemption of reservation lands from Version 10 of Schedule 3 has  
24 had little impact. As can be seen in APS Exhibit 20, there have been all of 34 residential  
25 line extensions in 2008 and 2009 combined (only one in 2009). The total collapse of the real  
26 estate market and especially residential real estate has spared no part of the state or the  
27 Company's service area. *See* Ewen Testimony, Tr. at 693 and 888-889. Native American  
28 reservations were no exception, line extension policy notwithstanding.

### III. REPLY TO SETTLING PARTIES

In the initial brief filed on behalf of Southwest Energy Efficiency Project, Western Resource Advocates, Arizona School Boards Association, and Arizona Association of School Business Officials ("SWEEP, et al."), one of the benefits of the Agreement is stated on page 2, line 23, as: "Energy efficiency programs at 100 schools or more within the next year that require no up front costs to the schools." This may imply that all 100 schools will be served through an enhanced financing program that allows for no up front investment by the school. In fact, the Agreement at Section 14.11.b. contemplates a mixture of both enhanced financing and traditional incentive/rebate programs to reach these 100 schools, depending on what works best for a particular school. APS has since spoken with SWEEP representatives and confirmed that both parties in fact interpret this provision of the Agreement to allow for both financing and incentive/rebate programs.

On October 16, 2009, Staff submitted S-19, which represents Staff's final review of and recommendation concerning Revised (per the Settlement) Schedule 3. APS commends Staff for its thorough and fact-intensive examination of Schedule 3, including the proposed schedule of charges. The Company accepts all of the changes proposed in S-19 and with those revisions, APS asks the Commission to approve Revised Schedule 3 as part of its final order in this proceeding.

### IV. CONCLUSION

The Agreement is a tribute to the leadership of Commission Staff and the hard work of nearly two dozen parties representing the broadest array of interests imaginable. Approval of this Agreement provides significant benefits to APS's customers as were discussed at length in the initial briefs of the Settling Parties. Now is not the time to allow the admittedly strongly-held views of the few to deprive the customers of APS, including families, businesses, schools, and other institutional or governmental entities, the many benefits of the Agreement. The problem is not Schedule 3, which is substantially reformed by the terms of the Agreement, but the severe downturn in the economy – a downturn that has been especially hard on the real estate industry. And neither a return to subsidies for

1 development nor the failure of this Agreement to receive approval will cause this recession  
2 to end. Indeed, for Arizona the latter course of action is more likely to extend it.

3 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of October, 2009.

4  
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12 October, 2009, with:

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18 faxed or transmitted electronically this 23<sup>rd</sup> day of  
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20 All Parties of Record

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